

APPENDIX I

**PROGRAMMATIC AGREEMENT BETWEEN
THE BUREAU OF LAND MANAGEMENT, THE WYOMING
STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE PINEDALE ANTICLINE GAS
FIELD EXPLORATION AND DEVELOPMENT, WYOMING**

WHEREAS, the United State Department of the Interior, Bureau of Land Management (Bureau) has a program which permits, approves, and regulates the management of development projects within public lands; and

WHEREAS, the Bureau has determined that exploration and development of the Pinedale Anticline Gas Field will have an effect upon properties eligible for inclusion within the National Register of Historic Places, and has consulted with the Wyoming State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) in accordance with Section 106 of the National Historic Preservation Act 16 U.S.C. 470 et seq. (the Act) and its implementing regulations (36 CFR Part 800 revised and implemented June 17, 1999); and

WHEREAS, previous identification efforts including consultation with Native American Groups and the Oregon-California Trails Association have identified that significant historic properties, including Lander's Cutoff of the Oregon National Historic Trail, and Native American Sacred/Respected Places as well as traditional cultural properties are present within the defined boundaries of the gas field (see Attachment 1) and will be affected by gas field development; and

WHEREAS, the Bureau is required to consult with Native American Tribes and others regarding the effects of the proposed gas field development upon resources which are of import to those entities; and

WHEREAS, the Bureau has evidenced its commitment to consultation with the Eastern Shoshone, Northern Arapaho, Northern Ute, and Shoshone-Bannock Tribes on this undertaking through the numerous meetings and field visits with Tribal elders as well as the invitation of affected Tribes to become invited to concur under this Agreement; and

WHEREAS, the Bureau has determined that Ultra Resources, McMurtry Oil, BP-Amoco, Anchutz Exploration Company, HS Resources, Alpine Gas Company, Questar Exploration and Production, Yates Petroleum Corporation, Jonah Gas Gathering Company, and Western Gas Resources hold leases or carry natural gas as pipeline companies within the Pinedale Anticline Project Area and has consulted with these leaseholders and pipeline companies and provided them with an opportunity to become invited parties to this Agreement; and

NOW, THEREFORE, the Bureau, the Wyoming SHPO and the Council agree that the undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the construction, operation, and maintenance of the Pinedale Anticline Gas Field on historic properties.

Stipulations

The Bureau will ensure that the following measures are carried out.

I. Planning Document

The Bureau will ensure that a Class I Planning document is prepared for the Pinedale Anticline Gas Field which is the area of potential effect (APE). A map delimiting the proposed APE is presented in Attachment 1. This document will summarize and synthesize previous work within the prescribed area of the field. This will provide core information for the development of a Management Plan. This document will include an ethnohistorical study of the project area as well as geophysical, soils,

biological, and cultural-historical information. A segment of this document will detail the requirements for Native American consultation under Section 106 and other authorities. The Bureau will assure that this document meets the guidance provided in appropriate sections of the Archaeology and Historic Preservation: the Secretary of the Interior's Standards and Guidelines for the Treatment of Archeological Properties (FR48-190).

A) This document will be reviewed and approved by the Wyoming State Historic Preservation Office. The Bureau will submit this document for thirty (30) day review by the signatories and concurring parties.

B) If an objection is raised it will be resolved as per Stipulation VIII.

C) The planning document will be completed and submitted for review within one year of ratification of this Agreement by the Council. Failure to meet this deadline will result in automatic expiration of this Agreement. The parties may choose to re-initiate the Agreement after consultation and amendment

D) Should this Agreement expire as per Stipulation I(c) the Bureau will consult on a case-by-case basis on all activities covered by this Agreement pursuant to the Wyoming State Protocol of 1998.

II. Management Plan/Research Design

The Bureau will ensure that a Management Plan/Research Design is prepared for the Pinedale Anticline Gas Field. This document will be reviewed and approved by the Wyoming State Historic Preservation Office prior to implementation. The Bureau will submit this document for thirty (30) day review by the signatories and concurring parties.

A) This document will be reviewed and approved by the Wyoming State Historic Preservation Office. The Bureau will submit this document for thirty (30) day review by the signatories and concurring parties.

B) If an objection is raised it will be resolved as per Stipulation VIII.

C) The planning document will be completed and submitted for review within one year of ratification of this Agreement by the Council. Failure to meet this deadline will result in automatic expiration of this Agreement. The parties may choose to re-initiate the Agreement after consultation and amendment

D) Should this Agreement expire as per Stipulation II(C) the Bureau will consult on a case-by-case basis on all activities covered by this Agreement pursuant to the Wyoming State Protocol of 1998.

1. Management Plan- This portion of document will detail data collection, identification, recording, avoidance, monitoring, discovery, geoarchaeology, and evaluation procedures to be followed within the study area. There will also be details on disposition of remains and samples collected. Components of the Plan will include management of all types of properties likely to be encountered in the Pinedale Anticline area of effect including the following examples: human remains, Native American Traditional Cultural Properties/Sacred/ Respected Places, and Trail management. The Bureau will assure that this document will meet the guidance provided in appropriate sections of the Archaeology and Historic Preservation: the Secretary of the Interior's Standards and Guidelines for the Treatment of Archeological Properties (FR48-190) and the Treatment of Archaeological Properties: A Handbook. The Management Plan will establish the overall desired condition for the Pinedale Anticline resource base, including resources which need to be avoided.

2. Research Design- This portion of the document will establish the overall desired condition for the Pinedale Anticline Gas Field data base. This will be a state-of-the-art research program and will detail critical research domains, topics, questions, test implications, confidence intervals necessary to guide research and treatment of resources within the study area. The Bureau will assure that this document will meet the guidance provided in appropriate sections of the Archaeology and Historic

Preservation: the Secretary of the Interior's Standards and Guidelines for the Treatment of Archeological Properties (FR48-190). The Research Design also will provide for the completion of a synthetic overview document or documents as well as popular summaries of the research conducted as a result of this Agreement. The Research Design will be reviewed and approved by the Wyoming State Historic Preservation Office and the Council prior to implementation.

III. Development Prior to Completion of Plans

Until the documents which are listed in Stipulations I and II are completed and accepted by the Council and SHPO, the Bureau will conform to the following case-by-case format. The BLM will ensure that historic properties which may be affected by any undertaking are identified and evaluated in accordance within the Wyoming State Protocol of 1998 and follow the procedures established below. The BLM will ensure that project-specific surveys and other efforts to identify and evaluate historic properties are conducted in accordance with appropriate professional standards as defined in BLM Manual 8110, *Identifying Cultural Resources*, BLM Manual 8120, *Protecting Cultural Resources*, Wyoming BLM supplements, the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716), and relevant SHPO guidance. Investigative work must be supervised by an individual or individuals meeting or exceeding the professional qualification standards promulgated by the Secretary of the Interior (48 FR 44716).

A. Inventory and Evaluation

1. Identification

a. Information Needs: The BLM will, during the earliest feasible planning stage of any activity, determine the information needed to identify and evaluate historic properties situated within the area of potential effects (including visual, audible, atmospheric, and direct impacts) Such determinations may be based on a file search of the SHPO/BLM cultural resource records, aerial photographs, GLO records, BLM land records, resource management plan, project-specific NEPA documents of the proposed project area and on information sought or obtained from SHPO and other interested persons including affected Tribes. The collection of this information is recognized as an ongoing process often independent of particular activities subject to Bureau approval. The Bureau will continue to elicit information regarding areas of concerns to the tribes.

b. Level of Inventory: If the BLM determines that a Class III inventory of the area of potential effects (APE) is necessary, the BLM need not seek the SHPO's views on identification efforts. If the BLM determines to conduct an inventory at less than a Class III level of intensity, BLM will consult, in writing, with the SHPO on the adequacy of the inventory design prior to initiating the inventory or authorizing the proposed undertaking. Any disputes over the adequacy of the proposed inventory efforts shall be resolved in accordance with the dispute resolution clause of this Agreement.

c. Defining the Minimum Intensive Inventory Area (MIIA): The appropriate minimum size of MIIAs for specific types of undertakings covered in this Agreement are as follows:

Well Locations/Tank Batteries - 10 acres

Roads/Lateral Pipelines/Power lines - Width of proposed disturbance plus 50 foot wide buffer on either side of the corridor for entire length

Transmission Pipelines 300 foot wide corridor for entire length (Pipe diameters of 24 inches or higher)

200 foot wide corridor for entire length (Pipe diameters of less than 24 inches but higher than 16 inches)

Width of proposed disturbance plus 50 foot wide buffer on either side of the corridor for entire length. (Pipe diameters 16 inches or under)

Communication Stations - 2 acres

Other Projects/Facilities - discretion of the Bureau cultural resource specialist

The size of the survey area outside of the MIIA shall be at the discretion of the BLM cultural resource specialist. In doing so the cultural resource specialist must include visual, audible, atmospheric impacts as a consideration beyond the area of direct effects. Reconnaissance inventories may be appropriate for assessing visual, audible, and atmospheric elements.

- d. Project Segmentation: The BLM may determine that some very large projects (e.g., geophysical exploration) can be more efficiently completed if segmented. If a project is to be segmented, the SHPO will be consulted about the appropriateness of segmentation and the details of the segmentation. Report submittals will be determined in consultation with the SHPO on a case-by-case basis.
- e. No Find Situations: If the BLM determines that no cultural resources eligible under criteria a-c, it may, immediately upon review and acceptance by the BLM staff specialist, submit its report to the SHPO, notify interested persons, and then proceed with the undertaking.

2. Exemptions

Those exemptions current in the Wyoming State Protocol Agreement of 1998 will be applicable to this Agreement.

a. Disturbed Areas: If the proposed activity is not listed in the exemptions found in Appendix C of the Wyoming State Protocol Agreement of 1998 (Attachment 2), the BLM cultural resource specialist will determine whether previous ground disturbance has modified the surface so extensively that the probability of finding intact cultural properties is negligible. If such disturbance has occurred in the area of potential effect, the Bureau will document this in a letter to the SHPO and may proceed with the undertaking.

i. The Bureau cultural resource specialist will determine if potential visual, auditory, and atmospheric impacts to historic properties for which setting is a contributing factor would not be an exemption to the need for gathering information in the field.

b. Previous Adequate Inventory: The Bureau cultural resource specialist will determine whether the area of potential effects has been adequately inventoried for historic properties. If an adequate Class III inventory has been completed (generally after 1980 as defined in the Wyoming BLM Handbook) and previously reviewed by the SHPO, the Bureau will document this in a letter to SHPO and may choose to proceed with the undertaking

c. Areas with Low Potential for Containing Historic Properties: The BLM and the SHPO may jointly determine that specific areas do not need to be inventoried because current information suggests that the area has little or no potential to contain historic properties. Such determinations require consultation on a case-by-case basis between the SHPO and the Bureau.

3. Evaluation for National Register Eligibility

a. Evaluation Standards: The Bureau shall evaluate resources consistent with the *Secretary of the Interior's Standards and Guidelines for Evaluation* (48 FR 44729) and other relevant guidance such as *National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation*.

- i. Sites Within the MIIA: The BLM will ensure that any properties identified within a project's MIIA are evaluated in accordance with the provisions of this Agreement..
- ii. Sites With Boundaries Extending Outside the MIIA: Sites located within the MIIA but which have boundaries that extend outside of the MIIA must be evaluated and tested, as appropriate, in the area of the site most likely to yield information. This may require that the site be tested outside the MIIA. All testing will conform to the standards required under the Pinedale Anticline testing procedures.

iii. Sites Outside the MIIA: All properties completely outside of the MIIA but within the area examined during the information gathering stage may be left as unevaluated unless they possess values which may qualify them for consideration for inclusion within the *National Register of Historic Places* under any criteria other than criterion d. Potential Traditional Cultural Properties within one-mile of activities will be evaluated for significance as per Stipulation III(A)(3)(a)(iv).

iv. Traditional Cultural Properties and/or Sacred/Respected Places Within One Mile of APE: All Traditional Cultural Properties and/or Sacred/Respected Places within one mile of a proposed area of specific disturbance will be subject to evaluation and consultation on a case-by-case basis. Information as to whether a resource qualifies as a traditional cultural property comes from consultation with appropriate Native American groups as per guidance in Bureau manual H-8160-1 (see Attachment 3) and *National Register Bulletin #38* and *guidelines currently being developed by the Bureau*.

b. Properties with only Archaeological or Historical Research Value: The Bureau cultural resource specialist will determine if properties significant only for their potential contribution to archaeological and historical research are eligible for the National Register. The effectiveness of the BLM's evaluation of these properties may be discussed by the SHPO and BLM at the annual review meeting or at other times mutually agreed to by the BLM and SHPO.

c. Properties with Associative or Design Value: Excluding cultural resources with historical and archaeological research potential only as well as historic linear features, the BLM will evaluate the National Register eligibility of all other properties in consultation with the SHPO. These include properties significant for their association to events (Criterion a), their association with important persons (Criterion b), or because they are representative of a distinctive design or construction (Criterion c) [36 CFR Part 60.4]. Historic period linear features may be recorded and evaluated as specified in Appendix D, "Recordation and Evaluation of Historic Period Linear Features" of the Wyoming State Protocol Agreement (Attachment 4). The Bureau will afford the SHPO thirty (30) days to comment on these situations. If the BLM and the SHPO agree that no properties identified within an undertaking's area of potential effects qualify for listing on the National Register, BLM may proceed with the undertaking.

d. Native American Consultation: Should sites of recognized importance to Native American Tribes be present within one mile of a proposed undertaking the Native American consultation according to BLM Manual H-8160-1 *National Register Bulletin #38* and Bureau guidelines will be implemented.

e. Disagreement of Eligibility: If the BLM and any signatory to this Agreement cannot resolve a disagreement on the eligibility of a property, the BLM will seek a formal determination of eligibility from the Keeper of the National Register pursuant to 36 CFR Part 63.2.

4. Assessment of Effects

a. No Historic Properties Affected Situations:

i. Avoidance of Unevaluated Properties on Geophysical Projects: Cultural resource inventories conducted specifically for geophysical exploration projects will not be required to evaluate identified properties provided the properties are avoided by an appropriate distance as defined in the BLM Manual 8111. Proper avoidance will be regarded as a "**no historic properties affected**" situation. The BLM will submit its report, as approved by the BLM cultural resource specialist, to the SHPO and proceed with the undertaking.

ii. Other Avoidance of Effects: If an undertaking is modified to avoid effects to historic properties eligible under National Register Criterion d through project relocation, project redesign, erection of barriers, or fencing of construction, the undertaking will be regarded as a "**no historic properties affected**" situation.

iii. Requests for Determination of "No Effect": The BLM shall request, in writing, SHPO's concurrence on all other situations which the BLM believes to be a "no historic properties affected." The SHPO shall be provided 15 calendar days to respond to the BLM's finding of **"no historic properties affected."**

b. No Adverse Effect Situations: Historic properties eligible under National Register Criterion d [36 CFR Part 60.4(d)] may contain areas with significant cultural deposits and areas which would contribute little or no information about prehistory or history. When an undertaking is planned within the boundaries of these properties and will not affect the qualities which contribute to the significance of the property, it will be considered a **"no adverse effect"** situation. The BLM will submit its report, as approved by the BLM cultural resource specialist, to the SHPO and proceed with the undertaking.

c. Adverse Effect Situations: In determining if an undertaking is considered to have an adverse effect, the Bureau and in consultation with the SHPO will apply the Criteria of Adverse Effect at 36 CFR Part 800.5(a). An **"adverse effect"** situation occurs whenever the Criteria of Adverse Effects are met. The Council will review undertakings adversely affecting National Historic Landmarks or National Register eligible properties of national significance in accordance with Bureau Manual 8110.33. The Council will also be invited to participate in the review of undertakings which relate to adverse effects to Traditional Cultural Properties and/or sacred/respected places.

B. Treatment

1. Determining Appropriate Treatment: In accordance with the both the Advisory Council's *Treatment of Archeological Properties - A Handbook*, Principles VII and VIII, and Bureau Manual 8120.21, the preferred strategy for treating potential adverse effects on cultural properties is avoidance. If avoidance is imprudent or infeasible, a range of alternative physical and administrative conservation measures should be considered.

The Bureau will consult with the affected Native American Tribes and SHPO on any proposed treatments for findings of "no adverse effect" where Section IVA4b does not apply. The Bureau will submit written treatment plans and afford the SHPO 30 calendar days to comment on findings of no adverse effect, and provide the SHPO with final reports on the implementation of treatments.

C. Disagreement on Findings of Effect or Treatment

If any party objects to the Bureau's finding of effect or treatment, and the issue cannot be resolved through the Dispute Resolution Procedures of the Wyoming State Protocol of 1998, the undertaking will be considered "highly controversial" and will require Council review.

IV. State Lands

The Bureau will take a lead in encouraging the State of Wyoming to manage cultural resources on its lands in a fashion compatible with those employed on Federal lands. The Bureau will discuss with the State of Wyoming the option of a land exchange whereby the Bureau would acquire a significant segment of the Lander Trail. This would assure that the entire trail in this area is managed to the same standards. Should these negotiations fail the Bureau will discuss with the Oregon-California Trails Association the possibility of that organization acquiring this segment of trail in a purchase from the State of Wyoming.

V. Public Education

The Bureau will develop a program to promote public education concerning the cultural values within the Pinedale Anticline Gas Field. This program will provide public access to non-protected information regarding the cultural resources of this area. The public education program may include, but not be limited to; interpretive signs, brochures, lecture programs, videos, tours, a web site, and popular history summaries (see Attachment 5). Parties to this Agreement will be kept informed of progress in this program through receipt of copies of the Annual Report (see Stipulation VI).

VI. Annual Report

On or before March 31 of each year, the Bureau shall prepare and provide to the SHPO, affected Native American Tribes, requesting parties, and the Council an annual report addressing the following topics:

- A. status update of fieldwork
- B. a list of properties determined eligible, ineligible, and unevaluated for the *National Register of Historic Places*
- C. a list of historic properties for which mitigation measures or avoidance were applied to reduce or eliminate effects, including what mitigation measures were used
- D. a discussion of issues and disputes related to the implementation of this Agreement
- E. a list of consultations that occurred with Native American tribes or other interested parties as well as a summary of results
- F. a list of historic properties affected but not subject to mitigation measures
- G. a discussion of public education efforts
- H. recommendations to amend the Agreement if deemed necessary
- I. other information consistent with operations of the Management Plan.

VII. Annual Meeting

Prior to the end of April of each calendar year the Bureau and the SHPO shall meet to discuss activities conducted during the previous year as well as to plan for the coming field season. Other parties to the Agreement may be invited to attend the annual meeting.

VIII. New Lessees

The Bureau will invite new lessees within the Pinedale Anticline Gas Field to concur in this Agreement as they become identified.

IX. Amendment

The SHPO, Council, or Bureau may request that this Agreement be amended, whereupon they will consult in accordance with 36 CFR Part 800.14 to consider such amendment. Amendments will become effective when signed by all parties.

X. Dispute Resolution

Should the SHPO object within 30 days to any activity pursuant to this Agreement, the Bureau shall consult with the objecting party to resolve the objection. If the Bureau determines the objection cannot be resolved, the Bureau shall forward all documentation relevant to the dispute to the Council. Within thirty days after the receipt of all pertinent documentation, the Council with either:

- A. provide the Bureau with recommendations, which the Bureau will take into account in reaching a final decision regarding the dispute; or
- B. notify the Bureau that it will comment pursuant to 36 CFR Part 800.9 and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the Bureau in accordance with 36 CFR Part 800.14 with reference only to the subject of the dispute; the Bureau's responsibility to carry out all actions under this Agreement that are not subject of the dispute will remain unchanged.

XI. Public Objection

Should any member of the public object to any activity pursuant to this Agreement, the Bureau will consult with the objecting party to resolve the objection.

XII. Agreement Start

This Agreement shall become effective upon ratification by the Council. The Agreement will remain in effect for five years from the day following ratification by the Council.

Ninety (90) days prior to the end of the term of this Agreement, the parties to the Agreement shall review its terms based on the results of the annual report and other such information regarding its terms as parties deem appropriate. The parties may agree to renew the Agreement to become effective upon the expiration of the Agreement.

XIII. The SHPO, Council, or Bureau may terminate this Agreement by providing thirty days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Bureau will comply with 36 CFR Part 800.3 through 800.9 with regard to individual undertakings covered by this Agreement.

Execution of this Agreement by the Bureau of Land Management and the Wyoming State Historic Preservation Officer, the Advisory Council on Historic Preservation, and implementation of its terms, evidence that the Bureau of Land Management has afforded the Council an opportunity to comment on the proposed undertaking and its effects upon historic properties, and that the Bureau of Land Management has taken into account the effects of the undertaking on historic properties.

Bureau of Land Management

By: _____ Date: _____

Wyoming State Historic Preservation Officer

By: _____ Date: _____

Advisory Council on Historic Preservation

By: _____ Date: _____

Concurring Parties:

Northern Arapaho Tribe

By:_____ Date:_____

Eastern Shoshone Tribe

By:_____ Date:_____

Northern Ute Tribe

By:_____ Date:_____

Shoshone Bannock Tribe

By:_____ Date:_____

Oregon-California Trails Association

By:_____ Date:_____

Ultra Resources, Inc.

By:_____ Date:_____

McMurry Oil Corporation

By:_____ Date:_____

Alpine Gas Company

By:_____ Date:_____

BP Amoco

By:_____ Date:_____

Anchutz Exploration Company

By:_____ Date:_____

HS Resources, Inc.

By:_____ Date:_____

Questar Exploration and Production

By:_____ Date:_____

Yates Petroleum Corporation

By:_____ Date:_____

Western Gas Resources

By:_____ Date:_____

Jonah Gas Gathering Company

By:_____ Date:_____

Attachment 1

See Figure 1-2 in the Draft EIS

Attachment 2 - Exemptions

To be developed

Attachment 3 - BLM Native American Consultation Handbook and Procedures

To be added

Attachment 4 - Evaluation of Linear Features

To be developed

Attachment 5 - Public Benefits Plan/Interpretive Themes, Goals, and Objectives

To be developed